## Transgender Individuals in the Workplace

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## Abstract

Ethics represents the building blocks upon which our whole society is based, and business is a large part of society with an integral responsibility of conducting business in a manner that supports societal ethics. However, for a business to conduct itself effectively, it is important to have an honest set of values and standards upon which that business operates. From the home to the office, we have seen more and more transgender people raising their voices in mainstream culture and opening the door to conversations about the transgender experiences in the workplace. This cultural shift has also raised some ethical questions as to what extent transgender identified people can be supported in an inclusive work environment. In this paper, the topic of transgender identity and how its impacts can be engaged by organizations seeking to be inclusive and supportive of all employees including transgender employees is discussed.

*Keywords***:** Transgender, employment, policy, Title VII, diversity, inclusion

**Transgender Individuals in the Workplace**

The recent rise of transgender identification, existing employment law, and the availability of workplace protections have presented a great degree of complexity in the course of business and ethics. Transgender people comprise an increasingly significant part of the American population and labor force, and yet, many transgender people also go to work in fear that they will lose their job on factors that have nothing to do with their level of performance and ability. Despite the amount of commitment and work that organizations

have done to protect employees and reputations, one question remains. How is the rise of transgender identification impacting employment and workplace? This purpose of this paper is to examine the complexity and impacts of being transgender across areas that affect employment, assess the availability of policies in protecting gender identity and transgender individuals in the workplace, and provide recommendations to increase their effectiveness.

**Understanding Sex and Gender**

To begin addressing this topic, it's important to discuss the concepts surrounding sex and gender. When it comes to the terms "sex" and "gender," these terms are often used interchangeably. Consider a newborn, whose sex is assigned and presumed based on their genitalia at birth. We call a newborn "male" when a penis is present and "female" when a vulva is present. Thereafter, people may find little concern for any further thought on this matter.

Although gender might begin with assignment, studies show that it can be far more complex than that. One's gender is not always narrowed into fitting reproductive functions or fitting into a gender binary model. Kermode (2018) finds that gender is believed to exist on a spectrum, with males representing one end and females representing the other end. Where a person falls on the spectrum of gender is relative to how they identify with and biologically experience their gender throughout their developmental stages of life (Kermode, 2018).

Gender is also contextualized by cultural expectation (Understanding Gender, 2017). The notion of being masculine or feminine is often equated to certain physical attributes. These attributes serve as a labeling of more masculine or more feminine, based on the degree to which those attributes present themselves (Understanding Gender, 2017). The gendering of bodies can have an ingraining, interpreting and lasting effect on how a person feels about themselves. Consequently, it also affects how others interact with and perceive them to be (Kermode, 2018).

**Transgender Terminology and Differences**

Gender identity and gender expression are broad topics that come with many different terminologies and expressions. Schroeder (2016) finds that due to the complexity and nature of gender, it is important to clarify and understand the differences in terminology and ensure correct references to avoid any pitfalls (Schroeder, 2016). In the case of being transgender,

the terms transgender, transsexual, and transvestite (or crossdresser) represent an area that commonly needs clarity to fully understand.

Transgender is an umbrella term and identity. It is used to describe one who does not identify with their assigned sex at birth and desires to be the opposite of that assignment (GLAAD, 2017). GLAAD (2017), points to the term "transgender" as always being an adjective, never a noun or a verb. It is considered offensive to refer to someone as "a transgender," as the more appropriate term would be "a transgender person" (GLAAD, 2017).

Klein (2017) agrees with GLAAD (2017) that when referring to a transgender person, it is important to pay attention to the correctness of terms being used. According to Klein (2017), you would not call someone "transgendered," because this would be equal to saying someone is "lesbianed" or "mexicaned" (Klein, 2017). Klein (2017) also points to the correct use of pronouns. Pronouns take the place of proper nouns and are often gendered in the English language (he, she, her, him, his, hers). Using the wrong pronoun can make a transgender person feel very uncomfortable, so it is important to either ask a transgender person which pronouns they prefer or listen to the way a person refers to themselves to avoid the mistake of assumption based on physical appearance (Klein, 2017).

Transsexual is a subcategory of Transgender (Schroeder, 2016). Transsexual is a term that refers to one who has changed their body, through medical interventions, to more closely align with their gender identity (Schroeder, 2016). Schroeder (2016) agrees with Klein (2017) in that transsexual is a narrower term than transgender. It is a term that should never be used to describe someone unless that person expresses a desire to be identified as transsexual(Klein, 2017). If the term is preferred, it is also to be used as an adjective and not a noun. For example, a person, in this case, would be a transsexual man or a transsexual woman, not simply a transsexual (Klein, 2017).

Transvestite is an older term, for the more correctly used term of a crossdresser (GLAAD, 2017). It is a gender expressive term that describes one who typically wears the clothing of the opposite sex and not for entertainment purposes (GLAAD, 2017). It is often reserved for heterosexual males who do not wish to change their sexual assignment, but instead wear clothing, makeup, and accessories that are culturally associated with women (GLAAD, 2017). "Transvestite" is a term that should be used with caution. As it is an older term, its history can be attached to many negative connotations. Therefore, it's crucially

important to ensure that when using the term "transvestite," it is because someone identifies that way (GLAAD, 2017).

**Transgender in Population**

From the home to the workplace, our world consists of many people who fit into the category of a transgender person. In fact, there are increasing numbers of population-based survey's in the United States that allow for estimating the size of the Lesbian, Gay, Bisexual, and Transgender (LGBT) population. However, according to Gates (2011) accurately estimating the size of the LGBT community has presented a host of challenges (Gates, 2011). These challenges span across several areas, such as the differences in definitions of who is included in each survey method, and a lack of consistency in the questions presented to each person in each survey (Gates, 2011). Gates (2011) also finds that specifically estimating the transgender population can be particularly challenging, because the definitions of who may be considered part of the transgender community, include the aspects of both gender identities and varying forms of gender expression or non-conformity. Furthermore, Gates (2011) notes that population-based surveys rarely ask questions to identify transgender people, and therefore cannot be used to provide an accurate estimation of the size and characteristics of the transgender population (Gates, 2011).

The most recent report, released by the Williams Institute in June of 2016, used data from the Center for Disease Control's Behavioral Risk Factor Surveillance System (BRFSS) to estimate the percentage and number of adults who identify as transgender nationally and in all 50 states, including by age range (Flores, Herman, Gates, & Brown, 2016). According to the report, an estimated 0.6% of adults, which equates to roughly 1.4 million adults, identify as transgender in the United States (Flores, Herman, Gates, & Brown, 2016). The report indicates that the highest concentration of transgender adults resides in Hawaii, with approximately 0.8% of adults, and the lowest concentration resides in North Dakota, of approximately 0.3% of adults. Notably, the District of Columbia (DC) was relatively high by comparison, with 2.8% of transgender-identified adults.

The report also examines the highest concentration of adults who identify as transgender by age. The 18-24-year-old age group had the highest concentration of transgender-identified adults, carrying 0.66% of the population. Following closely behind, the 25-64-year-old age group carried 0.58% of the population, while those aged 65 and older were the smallest sized group, carrying 0.50% of the population.

Further examining the report by rank, where 1 represents the highest concentration of transgender people and 50 represents the lowest concentration, one can see that states like Indiana (ranked 23) Virginia (ranked 24) Missouri (ranked 25) Kentucky (ranked 26) and Colorado (ranked 27) emerge to represent the median ranked area of this report. Each of these states, except for Colorado, represent states with a low overall policy tally for transgender legal equality. As the national debate escalates over accommodations for transgender people, it is important to consider the overall population size and distribution across the United States, as it is likely to raise questions about the sufficiency of policies and protections that support this population.

**Transgender and Title VII**

Among the most significant legal protections provided to transgender people, stands *Macy v Holder*, a landmark Equal Employment Opportunity Commission (EEOC) decision in 2012, that made it possible for increased protections surrounding gender identity and transgender people. The premise of the suit begins with Mia Macy, who is a veteran, former police detective, and transgender woman. Mia Macy, the plaintiff in the suit, was denied a position as a Ballistics Technician at the Walnut Creek, California Laboratory of the Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF) after coming out as transgender.

According to Transgender Law Center (2012), Macy was exceptionally qualified for this position because of her extensive background and training. She was also among the few people in the country to have specialized training and experience with the ATF's ballistics computer system. After pursuing this position, Macy was offered the job by the director of the ATF lab and was instructed to go through the formality of a background check. Midway through the hiring process, Macy disclosed her plans to transition gender. Shortly after disclosing, she was told that funding for the position she was pursuing had been cut and was no longer available. Thereafter, Macy learned that someone else was hired for the job (Transgender Law Center, 2012).

After being denied the position she was essentially guaranteed, Macy filed a lawsuit on the grounds of discrimination because of her sex, gender identity, including stereotyping. The suit resulted in a victory for Macy when the court ruled that "discrimination based on gender identity, change of sex, and/or transgender status is cognizable under Title VII (Schroeder, 2016)." Naturally, this was a significant win for gender identity and Equal

Opportunity Employment. According to Transgender Law Center (2012), it was also the first time in history that the EEOC had held that transgender people are protected from discrimination by federal law (Transgender Law Center, 2012).

On October 5, 2017, Attorney General Jeff Sessions issued a memo ordering the United States Justice Department to take a position, in all pending and future matters regarding The Civil Rights Act, that the word "sex" means only "biologically male or female." According to Mr. Sessions, "The Civil Rights Act does not ban discrimination on gender identity per *se,* including transgender status." The memo was intended to officially withdraw the former directive made under *Macy v Holder,* which protected transgender people under the federallaw, and ordered the justice department to interpret "sex" to mean assigned biological sex at birth. Subsequently, this has further set the stage for a Supreme Court battle to clarify the application of the term "sex" and its protections under Title VII of the Civil Rights Act of 1964 (Savage, 2017). Despite the directive from Mr. Sessions, the EEOC's website maintained the term "sex" as written to include pregnancy, gender identity, and sexual orientation (U.S. Equal Employment Opportunity Commission, 2017).

**Transgender and Policy**

The Human Rights Campaign (HRC) recently examined available employment policies on a state level and their application to the LGBT community. HRC found that 20 states and Washington DC prohibit discrimination based on sexual orientation and gender identity. Two states prohibit discrimination based on sexual orientation only. Six states prohibit discriminationagainst public employees based on sexual orientation and gender identity, and five states prohibit discrimination against public employees based on sexual orientation only (Human Rights Campaign, 2017).

Despite the lack of policies and legal protections, organizations have not stood silently. In fact, Human Rights Campaign (2017) found that non-discrimination policies are on the rise (Human Rights Campaign, 2017). Within the Fortune 500 alone, the clear majority (89 percent) has acted on prohibiting discrimination based on sexual orientation. Two-thirds of the Fortune 500 (66 percent) prohibit discrimination based on gender identity, which grew from just three percent of organizations in the year 2000. Out of the 10 most largely traded companies, eight of them prohibit discrimination based on sexual orientation and six out of 10 prohibit discrimination based on gender identity. With the rise in non-discrimination policies in mind, the larger question turns to the availability of non-discrimination policies

outside of the Fortune 500, and where that segment of organizations should begin to address this topic.

**Transgender and Employment**

Employment is one of the most challenging areas for transgender and non-gender conforming people (Lambda Legal, 2017). Work is essential, becomes part of a person's identity, and many people spend a lot of time doing it to make a living. However, obtaining and keeping a steady job is often out of reach for many transgender and gender non-conforming people (Lambda Legal, 2017). Lambda Legal (2017) finds that where employment opportunity is present for transgender and non-conforming people, it is often met with being exposed to unfair policies or even a lack thereof. This can further lead to traumatic experiences in the workplace, such as being accused of using the "wrong" restroom or being harassed for not conforming to one gender stereotype or another (Lambda Legal, 2017).

For many organizations, deferment to existing federal and state employment laws and their current protectionstherein can serve as a baseline for employment. However, as Transgender people become increasingly visible in the modern workforce, public awareness of gender is rising, social expectations are shifting, and trans-related employment laws are changing (Karsten, 2017). With this in mind, Schroeder (2016) proffers that it is going to be important for organizations to stay at the forefront of this trend by being attentive to the understanding of gender, gender terminologies, and gender expressions in the workplace (Schroeder, 2016). Having clarity in this area can help avert some of the risks and dangers that lead to breakdowns in organizational culture, performance, and policy (Schroeder, 2016). Therefore, it is imperative that organizations stay abreast of this ever-changing aspect of human life because it affects their efforts to protect their people, reputation, culture, and ultimately their bottom line (Schroeder, 2016).

Karsten (2017) finds that it is the companies who are well equipped with information, tools, training, and resources for gender diversity inclusion that can excel in this area and further create a competitive advantage in the workplace, notably in areas of talent acquisition and retention (Karsten, 2017). Many members of the workforce who are of the most recent generations, such as Millennials, expect an inclusive work environment (Karsten, 2016). Additionally, many younger workers also have lesbian, gay, bisexual, and transgender

(LGBT) friends, so they want to work in places where their friends are welcomed (Karsten, 2017).

According to Fredeen (2016), if businesses in the United States want to be strategic and effective in their inclusion efforts, they can start by examining whether their current policies and practices support an inclusive culture and environment (Fredeen, 2016). Covering gender identities, such as transgender individuals and more, can be key in avoiding potentially costly litigation and may also help with creating and sustaining a competitive advantage in the marketplace. Transgender Law Center (2017) offers a Model Transgender Employment Policy that can be used to help organizations clarify the law and aid them in welcoming, supporting, and including transgender, gender non-conforming, and transitioning employees in the workplace (Transgender Law Center, 2017). Additionally, Rodriguez-Roldan and Imse (2016), provides a list of five best practices for the workplace and four hiring best practices that can be followed in conjunction with the Model Transgender Employment Policy from Transgender Law Center (2017). Together, these tools can be used to further research and benchmark existing organizational policies and practices to determine at which extent they are inclusive, fair, equitable, and value transgender employees and applicants (Rodriguez-Roldan & Imse, 2016).

**Concluding Remarks**

To overcome the challenges that transgender identity presents in employment and the workplace, it is going to be incredibly important for organizations to learn as much as possible about this topic and discuss the positive impacts of inclusion. Learning about what gender identity is, what it means to be transgender in the workplace, and arming organizations with information, tools, training, and resources can lead to more effective policies and practices being formulated. It can also lead to more inclusive workplace cultures being built and increase the level of employee engagement and productivity. Furthermore, by seeking ways to stay ahead of this evolutionary movement in the workplace, organizations can set a new baseline for future organizations to follow and future generations of workers to build from, for generations to come.

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